REMARKS

Claims 1 – 6 and 9 – 30 are pending in this application.

In a Non-Final Office Action mailed September 10, 2007, claims 1 – 6 and 9 – 30 have been rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement. This rejection is respectfully traversed. This is a limitation that is made to exclude something disclosed in a reference of record. This type of amendment has always been viewed by the USPTO and the courts as a narrowing amendment and deemed to be supported by the specification under 35 USC §112. See *Reeves Bros., Inc. v. U.S. Laminating Corp.*, 157 USPQ 235, 245, at headnote 7. Moreover, in fact, none of the many weight loss supplements recited in the specification include a fat blend, so the limitation is in the specification. In addition, the specification specifies that:

> The terms "weight loss supplement" or "weight loss ingredient" as used herein include only substances or formulations which are recognized as weight loss supplements in the art of weight loss food supplements. They do not include diet ingredients such as low-fat or light formulations or sugar substitutes. That is, low-fat or light formulations of salad dressing are included in the salad dressing bases. Generally, weight loss supplements or weight loss ingredients are substances or formulations that are intended to affect body chemistry as opposed to diet ingredients which are intended to affect the amount of calories a food contains.

See the specification at page 6, lines 22 – 29. One skilled in the art clearly understands from this passage that the term "weight loss supplement" in the claims is not intended to include the fat blends of Sundram et al. The USPTO and the Federal Circuit have adopted the position that:

> The written description requirement does not require the applicant "to describe exactly the subject matter claimed, [instead] the description must clearly allow persons of ordinary skill in the art to recognize that [he or she] invented what is claimed."

Union Oil Co. of Cal. v. Atlantic Richfield, Co., 208 F.3d at 997, 54 USPQ2d 1227, 1232 (Fed. Cir. 2000) quoting *In re Gosteli*, 872 F.2d 1008, 1012, 10 USPQ2d 1614, 1618 (Fed. Cir, 1989). Thus, under the law, the claims meet the written description requirement of 35 USC ¶112, and the term "fat blend" is not new matter.

Claims 1 – 6 and 9 – 28 have been rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention because the specification does not define a "fat blend". This rejection is respectfully traversed. The term "fat blend" does not have to be defined in the specification since it is a term known in the art. It means exactly what the term means in the cited art of Sundram et al. See paragraphs [0002] and [0007], for example.

Claims 1 – 6 and 9 – 30 remain rejected under 35 USC 103(a) as being unpatentable over Sundram et al. (US Patent Application Publication No. 2002/0034562, hereinafter "Sundram et al.") in view of McCleary (US Patent No. 6,579,866, hereinafter "McCleary") and Hastings (US Patent No. 5,626,849, hereinafter "Hastings"), and further in view of Dente (US Patent No. 6,277,396, hereinafter "Dente"). This rejection is respectfully traversed. This rejection is based on the assumption of the Office Action that Sundram et al. discloses the use of salad dressing "as a carrier for a composition to achieve a health advantage." Respectfully, Sundram et al. does not teach that. Sundram et al. teaches that the fat blend can be used in "preparation" of salad dressing. See paragraph [0030], for example. Thus, Sundram et al. teaches that the fat blend may be used as part of the salad dressing base recited in claims 1 and 26. This use of a fat blend in a salad dressing base is as old as salad dressing and does not suggest the addition of an ingredient that actively promotes weight loss. The Examiner argues that "combining medicines to drinks and foods, including salad dressing, is well known in the art" and, as evidence, cites US Published Patent Application 20040043013, US Published Patent Application 20040072765, and US Patent No. 6849281. This argument shows how unfounded the Examiner's position is. First of all, we are not claiming putting a medicine in salad dressing. Secondly, the first two applications are not prior art to the present application, and the patent does not disclose what the Examiner says it does. It discloses using a fermented soy protein in food. It is hard for the undersigned to understand why putting a fermented soy protein (which is a food) in a food, and it is not patentable to put a weight loss supplement, which is not a food, in a food.

Claims 1 – 6, 9, 12 – 23, and 25 – 30 remain rejected on the ground of nonstatutory double patenting over claims 1 – 9 and 14 – 24 of McCleary, since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent. This rejection is respectfully traversed since

the point of invention in the claims is a combination not even disclosed in McCleary, much less claimed.

Applicants respectfully request an interview with the Examiner if the claims are still considered to be not allowable. The undersigned Applicant will be in Washington, DC on February 13, 2008. About 3:00 PM would be a good time. If this is not a good time, then perhaps early the same day, such as 8:30 AM or 9:00 AM might work. It is the experience of the undersigned Applicant that it is often the SPE that may actually have the objection to the claims. If this is true in this case, it is respectfully requested the SPE be present also.

In view of the above remarks, Applicants believe the pending application is in condition for allowance. A one-month Petition For Extension Of Time and the required fee are enclosed. Applicants believe no fee additional fee is due with this response. However, if any additional fee is due, please charge our Deposit Account No. 50-1848, under Order No. 023604.0102PTUS from which the undersigned is authorized to draw.

Respectfully submitted,
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